

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
JUN 26 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Part 90 of the
Commission's Rules Pertaining
to End User and Mobile
Information

PR Docket No. 92-78
RM-7407
RM-7749

ORIGINAL
FILE

COMMENTS

Columbia Communications, Inc.; Communications Center, Inc.;
Communications Ventures, Inc.; Kentec Communications, Inc.;
Madera Radio Dispatch, Inc.; Mobile Communications, Inc.; Nu-Page
of Winder; Paging Plus; and Tri-City Beepers, Inc. (hereinafter
"Commentors") hereby submit comments in support of the Commis-
sion's proposals contained within the above captioned Notice of
Proposed Rule Making and state the following:

90.179(e)

Although Commentors' earlier-filed Petition For Rule Making
did not suggest a total elimination of the requirement that end
user information be provided to the frequency coordination
entities (hereinafter "the coordinators"), a reading of the
Commission's NPRM demonstrates the bright logic of the
Commission's proposal. It appears by all that has been previously
stated by interested persons and by Commentors' experience and by
the Commission's admitted non-use of this data that elimination
is advisable and appropriate. Commentors know of no specific
instance where such information was actually used to provide the

10+5

coordinators with dispositive information for coordination of an application.

Commentors further note that the coordinators often request additional information in the form of channel occupancy studies acquired from on-site monitoring of the frequency, to demonstrate whether sufficient channel time exists to accommodate a new entrant onto a frequency. This real world, empirical data appears to be far more relevant to the coordination process than end user lists. Occupancy studies, when required to demonstrate that a new entrant might be served on a shared channel, go to the heart of the question that was to be answered by submission of end user lists and is far more relevant than end user lists might be. This is because a simple "head count" of end users does not necessarily reflect the amount of time in which the frequency is used. For example, the amount of time required to send a tone-only page is minimal, whereas the time necessary to send a multi-character alphanumeric page is many times greater than the tone-only page. Accordingly, a simple numerical figure representing the number of end users, even with additional data as to the identity of the end user, contact name, etc., will not actually demonstrate the level of usage of the frequency.¹

¹ It should be noted that, standing alone, an occupancy study might also not be dispositive to the issue of channel time availability. The relevancy of such a study might be dependent on the time of day, season, or other factors which might affect the results. However, an examination of license information regarding the number of mobile units or paging units employed by cochannel users in conjunction with a channel occupancy study

Commentors further note that the proprietary nature of end user lists is so sensitive that it requires the maximum protection which might be provided by the Commission. There is presently no codified method whereby a private carrier can be assured that such information will not fall into the wrong hands, i.e. a competitor's, and be used to raid customer bases with impunity. The coordinators have provided no such assurance that this will not be the consequence of compliance with Section 90.179(e) and the Commission's earlier suggestions that state law causes of action might protect licensees has been shown to be in error. In fact, NABER's previous suggestions that the information is available to competitors pursuant to a request under the Freedom of Information Act, following submission of the data by the coordinators to the Commission, merely demonstrates more fully the problem of keeping secure such sensitive, proprietary data following licensees' submissions to the coordinators in accord with Section 90.179(e). It, therefore, falls upon the Commission to provide much needed security to avoid unintended and undesirable consequences of its well-meaning rules.

Commentors believe that the remaining requirements within the Commission's proposed rules which mandate when licenses must be modified to reflect changes in the number of end users is sufficient to fulfill any of the coordinators' needs. Any

(when and if needed) should provide all data necessary for the coordinators to serve their function.

suggestion which might be raised to the contrary would be necessarily predicated on an assumption that licensees might fail to comply with the Commission's rules regarding timely filing of required modifications.² Although this presumption might, in some cases, prove accurate, it does not provide a valid basis for burdensome reporting requirements. With the exception of rules arising out the Commission's enforcement duties, requirements which are created merely to reflect the possibility that other rules might be violated are inherently redundant and burdensome and should be rejected.

Accordingly, Commentors strongly favor and support the Commission's proposed elimination of the requirement that end user and subscriber data be provided to the coordinators and hereby state, with the utmost vigor, that the Commission has taken a necessary and desirable step toward removal of unnecessary and overly burdensome regulation of shared systems.

Coordination Of A Proposed Increase In Mobile Units

Commentors also salute the Commission's common sense proposal to eliminate the need to seek coordination of an application which seeks only to record an increase in the number of mobile units or paging receivers. Commentors cannot fathom an appropri-

² As noted infra, the present requirements serve as an incentive for scofflaws to ignore licensing requirements. The proposed changes in the requirements will, in fact, encourage greater compliance due to the removal of unnecessary burdens on licensees.

ate basis whereby the coordinators would be justified in refusing to coordinate such an application. In fact, Commentors cannot recall a single instance where such an application has failed to receive a recommendation from a coordinator.

The public's long experience with frequency coordination has demonstrated some limited areas where the functions of the coordinators in practice has not met the intent behind creation of certain requirements. Past fears expressed by the coordinators that uncoordinated applications for changes in the number of mobile units might somehow undercut the coordination process have long been shown in practice to be unfounded. In fact, there is much evidence to show that requiring coordination of such applications has resulted in erosion of the coordinators' data bases -- the opposite result from that which the requirement was intended to serve.

Commentors believe that the availability of mobile and pager information from the Commission to the coordinators is quite sufficient to maintain the integrity of the coordinators' data bases and that formal coordination of such requests is overly burdensome and unneeded.

The experience of the Commentors in the operation of their systems also demonstrates that this function of the coordinators is superfluous. The incidents of harmful interference which

arise of out channel congestion are almost always the result of the proximity of fixed stations, not the existence of additional mobile units. In fact, this observation is sufficiently obvious as to be practically axiomatic.

If a licensee operates five mobile units, any harmful interference which results due to the operation of those five units will be the same as that which might exist if the licensee adds three more units. The harmful interference exists as a result of the operation itself, and not the number of mobile units. This analysis is even more compelling in consideration of the addition of paging receivers which are not, in themselves, a source of interference. In fact, there exists a quite valid question as to whether paging receivers should require any coordination, at all -- in the first instance or ever.

Commentors, therefore, applaud the Commission's proposal to remove the unnecessary burden and cost of coordinating the addition of mobile units. Commentors, however, request that the Commission take one additional step in bringing fairness to this area of frequency coordination.

Cost Of Coordination Based On Numbers Of Mobile Units

A particularly vexing portion of the coordinators' fees schedules have been those fees which are based on the number of mobile units and paging units to be employed by the system

operator. In view of the Commission's comments contained within its NPRM, it appears that the Commission would concur that frequency coordination charges based on a per mobile unit charge are demanded in error.³

Commentors recognize and respect the Commission's past decisions granting broad discretionary power to coordinators in the calculation of fees for services. Commentors do not seek to disturb the Commission's position, but Commentors do request that the Commission note the contrary expression of opinion within the NPRM as it applies to coordinators' fee schedules and request that the Commission's expressed positions and the method of setting charges for services employed by coordinators be reconciled.

To avoid this topic from the outset might cause another undesirable situation, wherein applicants would be encouraged to file a lead application with a coordinator which states that a single mobile unit will be used, then follow up with another application to the Commission to increase the number of mobile units, thereby avoiding charges based on a per mobile unit

³ Some coordinators' fees schedules which include per pager charges are wholly unjustified. It is, without question, an absurd method of charging for frequency coordination services. What possible additional service might be rendered by a coordinator processing an application for twenty pagers as compared to an application for forty pagers? This abuse of the broad discretionary powers granted by the Commission to the coordinators in setting fee schedules should be eliminated.

coordination fee schedule.⁴ This will cause duplication of effort for the Commission to license the complete system desired by the applicant as is reflected between the two applications.

This potential situation and the Commission's expressed position regarding coordination of mobile units can be easily reconciled by the Commission's disapproving those coordinators' fee schedules which include per mobile unit (or paging receiver) charges. It has been, without a doubt, a long standing sore subject with applicants and has resulted in scofflaws which will not file required modifications of their licenses because of the required but unjustified frequency coordination fees. The result has been the deterioration of the integrity of the coordinators' and the Commission's data bases as they reflect mobile unit counts for shared frequencies.

Commentors, therefore, urge the Commission to take this one additional and necessary step to remove an obvious, albeit unintentional, consequence of its proposed rules; and to avoid creating an economic advantage for those persons who might choose to file two, essentially duplicative applications to escape this existing unsupportable method of calculating frequency coordination charges. Commentors further respectfully request that the

⁴ Commentors note that not all of the coordinators base their charges on the number of mobile or paging units. Informally, the coordinators which do not so charge have expressed the opinion that such charges are unfair. Commentors agree.

Commission protect its own resources from being overburdened by the creation of rules which might lead to these practices.

Required Modification By Employing Percentage Calculations

Again, Commentors believe the Commission has moved in the proper direction. It makes no sense for spectrum management or the management of the Commission's scarce resources to require that applications be filed at each instance of addition or reduction in mobile unit count or paging unit count. Such requirements have led to the creation of scofflaws, have produced burdensome costs arising out of compliance, have caused an unnecessary burden for the Commission in processing these applications (when and if filed), have not served the interests of frequency coordination, and have, in general, caused an unnecessary and unjustifiable risk of noncomplying operation by even well meaning licensees. In total agreement with the Commission's position, it has further created a situation whereby the requirements of regulation do not parallel the realities of an extremely dynamic marketplace.

For private carriers on shared frequencies, one day's business transactions might require the filing of an application in accord with the present requirements. A month of business transactions might require several filings -- each with its own preparation costs, filing fee and coordination costs. And the net effect of all of these filings might easily be that the even-

tual license, following multiple grants of these (essentially) notifications of changed mobile or paging counts, would show the same number of units as the licensee started with. It does not take much imagination to see why the present requirements are so often ignored by licensees. Licensees can perceive no value, to themselves or the Commission or the coordinators, to complying with this onerous burden.

The Commission's stated preference for a requirement based on percentage of addition or deletion of mobile units or paging units, is a far better solution than the present requirement. It also reflects the dynamics of the marketplace. Commentors, therefore, urge the Commission to adopt this approach as a vast improvement over the present requirement.

Conclusion

Commentors wish to express their wholehearted support of the Commission's proposals as is reflected above. The Commission's rules in the licensing of mobile units and paging units and the concurrent frequency coordination requirements have long created extreme and unnecessary friction between the coordinators and applicants. The Commission, in accepting the assistance of the coordinators, expressed its hopes that the coordinators would act in a manner which would assist applicants in meeting the requirements of the Commission's rules. On the whole, the coordinators have often served this function well, assisting with

frequency selection and application preparation, catching small errors prior to submitting the applications to the Commission, and generally aiding in the management of the radio spectrum.

One primary area which has continued to be a sore spot between the coordinators and applicants has been the licensing of mobile and paging units. Per unit charges; requirements to file multiple applications; demands for unprotected sensitive end user data; and other related demands have place an enormous and unnecessary burden on licensees and applicants, without any obvious concurrent benefit to the public interest.

Accordingly, Commentors respectfully request that the Commission move with all speed to adopt its proposed rules.

Respectfully submitted,

By


Robert H. Schwaninger, Jr.

Dated:

6/26/92

Brown and Schwaninger
1835 K Street, N.W.
Suite 650
Washington, D.C. 20006
202/223-8837

Counsel for Commentors